**THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

**WRIT PETITION No.5371 OF 2006**

**DATED: 29-03-2006**

**BETWEEN**

K. Sasanka Mouli

S/o. K.L. Narsimha Rao,

R/o. 8-3-898/20/2

Nagarjuna Nagar

Ameerpet

Hyderabad.

…PETITIONER

**AND**

The Commissioner

Municipal Corporation of Hyderabad

Hyderabad and another.

…RESPONDENTS

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**ORDER:**

Petitioner seeks a Writ of Mandamus to declare the impugned Notice in Letter No. 106/ACP/TPS/U/2006 dated 04-03-2006 issued by the respondent under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioners submits that the petitioner purchased the Plot No.63, Sy.No.13/1 admeasuring 443 Sq. yards situated at Municipal Bearing No.16-11-16/63, Moosarambagh Malakpet, Hyderabad through registered sale deed 21 dated 05.01.1981 and applied for permission for construction of commercial complex and the permission was accorded vide permit No.58/OPEN/16/93 to construct cellar, ground and upper floors.
He further submits that the petitioner constructed the said complex according to the sanction plan and he has not deviated by violating the permission and also sufficient space is earmarked for parking, wherein the petitioner let out the ground floor to M/s. Trinetra Super Market and cellar godown for storing purpose.

While so, the respondent without issuing any show cause notice, issued a notice in Letter No.106/ACP/TPS/U/2006 dated
04.03.2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioner has made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structures within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioner has converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioner to remove the structures.

Having regard to the facts and circumstances of the case, the impugned notice dated 04-03-2006 in Letter No. 106/ACP/TPS/U/2006 is directed to be treated as a show cause notice only permitting the petitioner to file an explanation/representation within one week from the date of receipt of a copy of this order and on such an explanation being filed and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondents shall not remove or demolish the premises of the petitioner.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

March 29, 2006

DSK